IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10752 of 2004
WITH
SPECIAL CIVIL APPLICATION No. 10753 of 2004
WITH
SPECIAL CIVIL APPLICATION No. 10754 of 2004
WITH
SPECIAL CIVIL APPLICATION No. 10756 of 2004
WITH
SPECIAL CIVIL APPLICATION No. 10757 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTY EXECUTIVE ENGINEER - Petitioner(s)
Versus
KALABHAI CHHAGANBHAI - Respondent(s)

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Appearance :
MR MEHUL H RATHOD for Petitioner(s) : 1,
MR KIRTIDEV R DAVE for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI
Date : 17/11/2005

ORAL JUDGMENT

1. The petitioners have challenged the awards dated 04.05.2004 passed by the Labour Court, Junagadh (LCJ)

Nos.215/1993, 216/1993, 217/1993, 218/1993 and 319/1993 whereby the reference is partly allowed by directing the petitioner Board to reinstate the respondent workmen to their original posts with 20% backwages with continuity of service.

2. The short facts of the case are that the respondents were employed as part timers on daily wage basis for a fixed period till the completion of a particular project work. Thereafter, the respondents were not re-engaged for the work after completion of the said project. The respondents filed a complaint before the Assistant Commissioner of Labour, Porbandar alleging illegal termination of service which was then referred to the Labour Court, Junagadh for adjudication whereby the Labour Court passed the aforesaid orders. These orders are challenged in this petition.

3. Mr Mehul Rathod, the learned advocate appearing for the petitioners contended that since the respondents were daily wagers appointed for a particular project, they were not required to be given notice on completion of the said project. As and when the project was over, the workers appointed on daily wages were automatically relieved as their appointment was for a fixed period.

5. Mr Dave, the learned advocate appearing for the respondents contended that the order of the Labour Court is just and proper. Since they were daily wagers they could not serve at any other place and there is no distinction between a part-timer and a full-timer under the Industrial Disputes Act. In that view of the matter, the petitioners are required to follow section 25-F of the Industrial Disputes Act.

6. Heard the learned counsels for the respective parties. It is true that the respondents were appointed as part-timers. However, as they are working since long, the petitioners ought to have followed due procedure before relieving them. On that basis, the observation of the Labour Court regarding breach of section 25-F of the Act is required to be accepted. Therefore, no interference is required in the case of reinstatement.

7. However, I am of the opinion that the Labour Court, has granted 20% backwages without ascertaining any cogent and valid reason. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in

accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 and 12 read as under:

> “10. In Smt. Saran Kumar Gaur and others V. State of Utter Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. And Anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle “no work no 'ay” as the respondents had actually not worked on the higher post to which they were entitled to be promoted. In Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs

but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta V. State of Bihar, the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.

12.The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside."

7. In the premises aforesaid, the awards granting backwages are quashed and set aside. The awards of

reinstatement with continuity of service are confirmed. The respondent workmen will be entitled to all consequential benefits. The awards of the Labour Court are modified to the above extent. Rule is made absolute accordingly with no order as to costs.

(K.S. JHAVERI, J.)

Divya//